

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WA.No. 1755 of 2010 () IN WP(C).19359/2009

**AGAINST THE ORDER/JUDGMENT IN WP(C) 19359/2009 of HIGH COURT OF KERALA
DATED 21-12-2009**

APPELLANT(S)/PETITIONERS:

**1. ANIL KUMAR K.
THULASI VILASOM, UPPOODU, EAST KALLADA.P.O.
KOLLAM.**

**2. BINU.B.
SANTHA BHAVAN, PADMAVILASAM LANE, PRA 5
PEROORKADA.P.O., THIRUVANANTHAPURAM.**

BY ADV. SRI.P.NANDAKUMAR

RESPONDENT(S)/RESPONDENTS:

**1. STATE OF KERALA REPRESENTED BY SECRETARY TO
DEPARTMENT OF HOME
THIRUVANANTHAPURAM.**

**2. DIRECTOR GENERAL OF POLICE
THIRUVANANTHAPURAM.**

**3. KERALA STATE PUBLIC SERVICE COMMISSION
REPRESENTED BY ITS SECRETARY, THIRUVANANTHAPURAM.**

**4. ASOK KUMAR.P.
SUMATHY SADANAM, MEENAD
KOLLAM. (R4 IS DELETED FROM THE PARTY ARRAY AT
THE RISK OF THE APPELLANT AS PER ORDER DATED
07/07/2014 IN IA 575/2014)**

**5. GIREESH KUMAR.R.G.
ROHINI, KULAYETTIKKARA, ARAYANKAVU.P.O.
ERNAKULAM.**

6. GIREESH.T.G.
THEKKECHIRAKKAL HOUSE, KOTHACHIRA.P.O., PERINGODE VIA
PALAKKAD.

BY SR.GOV.T.PLEADER SRI.P.I.DAVIS
R3 BY ADV. SRI.V.RAJENDRAN, SC, KPSC
BY SRI.P.C.SASIDHARAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015, ALONG
WITH WA. 1961/2010, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**ASHOK BHUSHAN, CJ
&
A.M. SHAFFIQUE, J.**

“C.R.”

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W.A. Nos. 1755 & 1961 of 2010

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Dated this, the 20th day of May, 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard the learned counsel for the appellants and the learned standing counsel.

2. These two writ appeals have been filed against the common judgment dated 21st December, 2009 passed in a batch of writ petitions. The appellants were the writ petitioners who had filed the writ petitions by which the following reliefs were claimed;

W.P (C) No.19359/09

“i) to issue a writ of mandamus commanding the 2nd respondent to report 4 Non Joining Duty Vacancies and 5 Relieving Vacancies to the 3rd respondent forthwith.

ii) to issue a writ of mandamus directing the 3rd respondent to advise the 9 candidates reported by the 2nd respondent as Non Joining Duty and Relieving Vacancies from Ext.P1 ranked list

-:2:-

under category 1 (Open Market).

ii) to issue a writ of mandamus directing the 2nd respondent to send the 9 advised candidates for training along with the last batch of candidates advised on 7.4.2009."

W.P (C) No. 25400/09

"i) issue a writ of mandamus or any other appropriate writ, direction or order directing the 2nd respondent to report 23 vacancies of Sub Inspector of Police (GE) Trainee to the 3rd respondent forthwith.

ii) issue a writ of mandamus or any other appropriate writ, direction or order directing the 2nd respondent to report 7 Non Joining Duty Vacancies and 6 Relieving Vacancies of Sub Inspector of Police (GE) Trainee to the 3rd respondent forthwith.

iii) issue a writ of mandamus or any other appropriate writ, direction or order directing the 3rd respondent to advice candidates from Ext.P1 rank list to the 23 vacancies of Sub Inspector of Police (GE) Trainee forthwith."

3. The Kerala Public Service Commission had published a ranked list for filling up the post of Sub Inspector of Police (General Executive Branch) (Trainee) on 19th of August, 2006. The bone of contention of the parties was with regard to the date of expiry of the validity of the list. The petitioners' case was that the list expired on 9/9/2009 whereas PSC contended that the list expired on 01/02/2008. Kerala Public Service Commission Rules of Procedure provides for period of validity of the list.

4. Learned single Judge by the impugned judgment held that the list expired on 01/2/2008. Hence, the petitioners were not entitled for any relief on the basis of rank list. The petitioners aggrieved by the said judgment are in appeal. Learned counsel for the appellants in support of his submission that list was valid till 9/9/2009 submits that in pursuance of the judgment of this Court dated 15th of October, 2008 in WA Nos.282, 302 and 403/08 and W.P (C) No.29153/07, 39 candidates were directed to be advised by the PSC and those 39 candidates who were directed to

advice actually joined training on 10/8/2009. Hence, the list had continued one month more till 9/9/2009. The submission of the learned counsel appearing for the Commission is that the Division Bench judgment which has been relied by the learned counsel for the petitioners dated 15th of October, 2008 itself has noted that the last batch had joined training on 01/1/2008. Hence, the ranked list was to survive only up to 01/02/2008. He has referred to para 4 of the judgment.

5. Learned counsel for the appellants has placed heavy reliance on the proviso to Rule 13 in support of his submission. Rule 13 of the Kerala Public Service Commission Rules of Procedure, which is relevant for the case, is quoted as below;

“13. The ranked lists published by the Commission shall remain in force for a period of one year from the date on which it was brought into force provided that the said list will continue to be in force till the publication of a new list after the expiry of the minimum period of one year or till the expiry of three

-:5:-

years whichever is earlier.

Provided that the above rule shall not apply in respect of ranked lists of candidates for admission to Training Course that leads to automatic appointment to services or posts and that in such cases the ranked list shall cease to be in force after one year from the date of finalisation of the ranked lists or after one month from the date of commencement of the course in respect of the last batch selected from the list within a period of one year from the date of finalisation of the ranked lists whichever is later”.

6. Proviso to Rule 13 is applicable in the present case since the ranked list was for a post which was for admission to training course that leads to automatic appointment to service. There are two contingencies contemplated for the validity of the list. They are;

- (I) ranked list shall cease to be in force after one year from the date of finalisation of the ranked list or,

(II) after one month from the date of commencement of the course in respect of the last batch selected from the list within a period of one year from the date of finalisation of the ranked lists whichever is later.

7. In the present case, admittedly, the ranked list was finalised on 19/8/2006. Thus, the first contingency is not applicable. Appellants rely on the second contingency and submits that since out of two contingencies, whichever is later is to be taken, the date on which 39 candidates joined as per judgment of this Court dated 15th October, 2008 has to be taken. The Division Bench in para 4 of the judgment has noted about the joining of the last batch for training, which was 01/1/2008. It is useful to quote para 4 of the judgment, which is to the following;

“4. Apart from the above, we are of the view that the proviso to rule 13 clearly provides that the rank list will continue to be in force till training of the last batch of selected candidates start. Last batch of selected candidates during

-:7:-

the currency of the list was sent for training only on 1.1.2008. Once the rank list is prepared, there is no further selection. The function of the PSC thereafter is only to advice the candidates from the select list according to the vacancies reported subject to rules of reservation. Written test, practical test, interview and all required for the selection took place earlier. So, the last batch selected for the actual vacancies reported during the currency of the list within one year were sent for training only on 1.1.2008. So, the list will expire only on 1.2.2008. Since actual promotions of 59 Sub Inspectors of Police were effected before thee expiry of the list by Government notification dated 28.12.2007 and out of the promotees, 39 vacancies are direct recruits of General Executive branch allotted to the open candidates (80% of the 50% categories), we are of the opinion that PSC ought to have advised at least 39 candidates more from the list, if not 49, as anticipated by the Government. Since the vacancies were already reported before the expiry of the list and the vacancies actually

-:8:-

occurred before the expiry of the list and considering the fact that they have to be given further training for six months, we are of the opinion that PSC shall advice 39 candidates more on the open quota from the ranked list subject to the rules of reservation etc., as per law within one month from today."

8. Although the Division Bench by its judgment dated 15th of October, 2008 directed the PSC to advice 39 candidates more on the open quota from the ranked list subject to the rules of reservation, the said direction shall not come to the rescue of the appellants for the following reasons.

9. Proviso to Rule 13 on which emphasis is laid by learned counsel for the appellants contains a pre-condition for taking the second alternative, that is, after one month from the date of commencement of the course in respect of the last batch selected from the list within a period of one year from the date of finalisation of the ranked list, whichever is later. The training period of one month is thus contemplated from the date of

commencement of the course in respect of the last batch selected within a period of one year from the date of finalisation of the ranked list. The date of finalisation of the ranked list being 19th August, 2006, the batch which is selected within one year is only relevant for purposes of commencement of the course. In the present case, Division Bench judgment of the High Court was delivered on 15th of October, 2008, i.e., one year from the date of finalisation of the ranked list. Thus, 39 candidates who were sent for training under the judgment of the Court do not fall strictly in the letter of law, i.e., the proviso to Rule 13. More so, 39 candidates were directed to be advised by the Commission under the orders of the Court and the said judgment does not say anything about the expiry of the validity of the ranked list nor the said issue was under consideration in the said judgment, whereas, in para 4, it has been mentioned that the last batch were sent for training on 01/1/2008.

10. We are thus clearly of the view that no error has been

-:10:-

committed by the learned single Judge in dismissing the writ petitions taking the view that the validity of the list has already come to an end on 01/2/2008. We, thus, do not find any error in the judgment.

Both the appeals are dismissed.

Sd/-
ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp

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PA to Judge